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STATE OF NEW JERSEY

In the Matter of Sean Nally, Fire
Fighter (M2542M), Jersey City

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-3056

List Removal Appeal

ISSUED: OCT 03 2014 (SLK)

Sean Nally, represented by Michael L. Prigoff, Esq., appeals the attached determination of the Division of Classification and Personnel Management (CPM) upholding the removal of his name from the eligible list for Fire Fighter (M2542M), Jersey City, due to his failure to meet the residency requirement.

By way of background, the appellant appeared on certification OL130312 that was issued to the appointing authority on March 7, 2013. The certification contained 120 names, including Mr. Nally's, and 20 applicants were appointed. The list expired on December 12, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he failed to maintain continuous residency in Jersey City between the examination closing date of March 31, 2010 through the date that he was considered for appointment.

In support of the appointing authority's request, it provided a copy of the appellant's employment application indicating that he resided at a Jersey City address from May 2010 and a Bayonne address from September 2008 to May 2010. Also, it provided copies of tax documents from tax year 2011 which indicated that the appellant's address was in Bayonne. Additionally, it provided a copy of Mr. Nally's car insurance card which showed his address as being the Bayonne address for his parents. Consequently, the appointing authority asserted that the appellant failed to maintain a continuous residency in Jersey City during the required time period. Mr. Nally appealed the matter of the removal of his name to CPM. Mr. Nally stated that until he moved to Pavonia Avenue in Jersey City he used his

parent's Bayonne address for mailing purposes because his actual residence on Audubon Avenue in Jersey City was not a secure location for the purposes of receiving mail. The appellant also provided CPM two affidavits which attested to his having established residency in Jersey City on Audobon Avenue between February 2010 and August 2012. Additionally, Mr. Nally provided his 2012 vehicle registration receipt dated August 6, 2012 that listed his address on the registration as Audubon Avenue, which is the address the appellant had argued was unsafe for receiving important documents and did not match the address listed for his vehicle on his insurance card. CPM found that the appointing authority supported its request to remove his name from the subject list.

On appeal, Mr. Nally states that the sole basis for the appointing authority's request to remove his name from the subject list is that his 2011 W-2 has a Bayonne address. The appellant maintains that the appointing authority did not provide any other evidence supporting its request such as interviews with neighbors or any other documentation. In contrast, Mr. Nally argues that he has submitted multiple proofs demonstrating that he has continually resided in Jersey City since February 2010. Further, except for a temporary residence in 2008-2009, Mr. Nally indicates that he has resided in Jersey City since 2006, which is four years prior to the closing date. Specifically, the appellant submits a certification that states that he lived in Bayonne with his parents until 2006. Thereafter, Mr. Nally maintains that he moved to Jersey City until 2008 when he temporarily moved back in with his parents in Bayonne while rehabilitating from a serious car accident. The appellant asserts that in February 2010, he moved back to Jersey City for good when he rented an apartment on Audubon Avenue and continually resided there until August 2012. Then, Mr. Nally presents that he, his wife, and stepdaughter rented an apartment on Pavonia Avenue and have continually resided there until the present.

The appellant submits certifications from his Audubon Avenue landlord and from a friend and neighbor who represent that Mr. Nally moved to Jersey City in February 2010. Further, he submits his driver's license and other documents showing his residency in Jersey City at Pierce Avenue, his Jersey City Board of Elections voter profile reflecting his voter registration in Jersey City from July 2006 to the present, a copy of his driver's license reflecting his Audubon Avenue residence, a copy of his car registration showing his Jersey City residence, a copy of a letter enclosing his Security Officer Certification that shows his address as Audubon Avenue, and a copy of a lease for his Pavonia Avenue apartment dated July 27, 2012. The appellant asserts that these documents substantiate that he resided in Jersey City during the applicable time period. The appellant argues that since his Audubon Avenue address' mailbox was vulnerable to thefts, he made the smart and reasonable choice to have his mail sent to his parents' address and that this does not in any way reflect his true residence. Mr. Nally highlights that when

he moved to the Pavonia Avenue address and there was no longer an issue with his mailbox, he had his mail sent there.

Mr. Nally further represents that CPM made its initial determination based on his car being registered in August 2012 using the Audubon Avenue address and that his car insurance card for the period of November 2012 to May 2013 reflected that his car was insured under his parents' auto insurance policy during that time period. The appellant states that his driver's license correctly showed his Audubon Avenue address as his residence as this is where he resided at the time of the registration and he later changed it to the Pavonia Avenue address after he moved. However, regardless of where his car was registered, Mr. Nally claims that this is inconsequential as there are undisputed proofs that he lived at both Jersey City addresses and moved to the Pavonia address in 2012. Further, the appellant argues that his car registration does not undercut his reasoning as to why he elected to have his tax documents, including any refund checks, sent to an address other than his Audubon Avenue address for safety. Further, Mr. Nally maintains that his auto insurance card does not contradict that his bona fide residence was Jersey City as he has certified that he had substantial medical bills resulting from his 2008 accident and he was still swamped with bills with a new family and new residence in 2012. Consequently, he represents that his parents put him on their car insurance to help him.

In response, the appointing authority, represented by Vincent Signorile, Assistant Corporation Counsel, states that applicants were required to maintain a single residence in Jersey City, continuously up to the date of the appointment. It asserts that the omissions in Mr. Nally's certification coupled with the inconsistencies discovered in his application place the credibility of his certifications in question and should be subject to cross-examination. The appointing authority highlights that the appellant's employment application indicates that he resided in Bayonne from August 2008 to May 2010 and then he rented a room from Michael O'Leary at Audubon Avenue. However, Mr. O'Leary submitted a certification attesting that the appellant rented a room from him starting February 2010. It indicates that there is no lease or deed or ownership document provided by Mr. O'Leary indicating his ownership of the apartment for which he rented a room to the appellant. Further, the appointing authority reiterates that Mr. Nally's own employment application indicated that he did not move to Audubon Avenue until May 2010, which is two months after the March 2010 closing date. Additionally, the appellant's 2010 and 2011 W-2s and car insurance identification card indicate that Bayonne was his home address. It states that Mr. Nally indicated to at least three government agencies, including the United States Department of Commerce, Jersey City Public Schools, and Newark Public Schools, that his address was Bayonne, despite now claiming to have rented a room in Jersey City in 2010. The appointing authority concludes that while Mr. Nally may have currently established his residency in Jersey City, he cannot prove by a preponderance of the evidence

that he maintained continuous residency in Jersey City from March 2010 to the present as his employment application listed his residence as Bayonne from August 2008 to May 2010 as well as W-2s from multiple employers list his address as Bayonne. Consequently, it argues that the appellant has failed to meet his burden of proof.

CONCLUSION

N.J.A.C. 4A:4-2.11(e)1 provides that when an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment.

N.J.A.C. 4A:4-2.11(c) provides that where residency requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner, a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

N.J.A.C. 4A:4-2.11(h) provides that an applicant seeking to appeal a residency determination shall have the burden of proving his or her residency.

In this matter, candidates needed to maintain continuous residence in Jersey City from March 31, 2010, the closing date of the subject announcement, to when

they were considered for appointment. Mr. Nally's employment application with the appointing authority indicated that he resided in Bayonne from August 2008 to May 2010 and then moved to Jersey City in May 2010 to August 2012, which is two months after the closing date. Now, Mr. Nally claims that he moved back to Jersey City in February 2010, one month prior to the closing date and submits certifications from himself, his landlord for the Audubon Avenue address, and a friend and neighbor who all attest that the appellant moved back to Jersey City in February 2010. In other words, while the appellant wants to now assert that he has continuously maintained his residence in Jersey City during the required period, including submitting certifications in support, he had the opportunity to indicate on his employment application that he was a continuous resident of Jersey City during the required period, but did not.

Additionally, he has not submitted any documentation, such as a lease or rental agreement, bills, financial statements, or other documentation that would indicate that he moved into Jersey City in February 2010. Further, his 2010 and 2011 W-2s with three different government agencies, list his residence as being Bayonne. Also, his insurance card during the relevant time period reflects his address as being Bayonne. Now, he attempts to explain that during the required time period he listed his parents' Bayonne address as his address on his W-2s since his mailbox in Jersey City was not secure and that his insurance identification card reflected his parents' address because they were paying for his car insurance to help him with his financial burden. However, on question 102 of the employment application with the appointing authority, the appellant was asked, "Do you have any knowledge or information in addition to that specifically called for in the proceeding questions which is or which may be relevant, directly or indirectly, in connection with an investigation of your qualification for the position of Fire Fighter in the Jersey City Fire Department, including but not limited to knowledge or information concerning your...residence or otherwise?" Mr. Nally answered "No." The time for Mr. Nally to explain his contradictory documentation concerning his residency status was on his employment application so that the appointing authority would have complete information in order to make a proper determination regarding his candidacy. See *In the Matter of Brian J. McGrane* (MSB, decided April 25, 2007) (Residency information pertaining to eligibility for Police Officer title that the appellant failed to disclose or selectively disclosed is considered material and should have been accurately indicated on his employment application and provided during the interview process as requested by investigating officer and appellant's failure to do so warranted his removal).

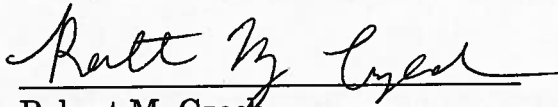
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M2542M), Jersey City eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
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Written Record Appeals Unit
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Attachments

c: Sean Nally
Michael L. Prigoff, Esq.
Vincent Signorile, Esq.
Robert Kakolesski
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
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Robert M. Czech
Chair/Chief Executive Officer

May 12, 2014

Michael L. Prigoff
Lebson & Prigoff, LLC
PO BOX 68
39 Park Place
Englewood, NJ 07631-0068

RE: Removal of Name from Eligible List – Sean Nally

Title: Fire Fighter
Jurisdiction: City of Jersey City
Symbol: M2542M
Certification No: OL130312
Certification Date: 03/07/13

Dear Mr. Prigoff:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement up to and including the date of appointment.

In support of its decision, the Appointing Authority provided copies of tax documents from tax year 2011 which indicate that Mr. Nally's address was 629 Avenue B, Bayonne, NJ 07002. Additionally, the Appointing Authority provided a copy of an insurance card for a 1997 Toyota (last six numbers of VIN: 239805) which shows the Bayonne address of Mr. Nally's parents. Pursuant to N.J.A.C. 4A:4-2.11(e)1, the Appointing Authority states that Mr. Nally failed to maintain continuous residency in the City of Jersey City from the closing date of the announcement (March 31, 2010) up to the date he was considered for appointment.

In your correspondence, you state that until Mr. Nally moved to Pavonia Ave in Jersey City, Mr. Nally used his parent's residence in Bayonne for mailing purposes because the address of his actual residence on Audubon Avenue in Jersey City was not a secure location for the purpose of receiving mail. You also have submitted two affidavits which attest to Mr. Nally's having established residency in Jersey City on Audubon Avenue between February 2010 and August 2012.

Also included in your documentation is a 2012 Vehicle Registration receipt dated August 6, 2012 for the same 1997 Toyota; however, the address on the registration lists 132 Audubon Ave, Apt 2G, Jersey City, NJ 07305-1040, which is the address Mr. Nally has argued as unsafe for receiving important documents and does not match the address listed for that vehicle on the Insurance Card. No other documentation to support Mr. Nally's claim of continuous residency in Jersey City has been submitted.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore Mr. Nally's name to the eligible list. Therefore, the Appointing Authority's decision to remove his name has been sustained and your appeal is denied.


In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,


Elliott Cohen,
Local Placement Services

c: Robert J. Kakoleski
Jersey City Dept. of Administration
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